YEE CHEE SWEE

v.

PROVINCIAL INSURANCE CO. LTD.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[ORIGINATING MOTION NO. C 17 OF 1980]
27 JUNE 1983

INSURANCE: *Accident policy - Death caused by motor-cycling - Meaning of 'motor-cycling' - Whether risk covered by policy.*

The deceased, a policy holder of Talisman Accident Policy No. T 2701802/5 died as a result of a motor accident, whilst riding a motor-cycle, during the currency of the policy. The plaintiff claimed for a sum of RM50,000 as compensation due to be paid out under the policy for death.

The facts of the case were not in dispute. But however the defendants denied liability on the grounds that the death of the deceased was caused by motor-cycling a risk, which they claimed, was not covered by the policy. The question stated by the Arbitrator for the decision of the Court was whether, upon a true construction of the policy, the word 'motor-cycling' contained in Exception 6 of the policy relates to the use of motor-cycle for any purpose or only to motor-cycling when undertaken as part of some sporting activity.

Held:

The word 'motor-cycling' must be associated with the meaning of the other words in the Exception, which relates to sporting activities supported by the presence of the word 'participation'. Therefore the word 'motor-cycling' contained in Exception 6 of the policy relates only to motor-cycling when undertaken as part of some sporting activity.

[Defendants to pay costs.]

Cases referred to:
Drinkwater v. The Corporation of the London Assurance [1767] 2 Wils KB 363
Tarleton & Ors. v. Starinforth & Ors. [1794] 5 TR 695 699
Braunstein v. The Accident Death Insurance Company [1861] 1 B & S 782

Legislation referred to:
Arbitration Act 1952, s. 22

Other sources referred to:
Broom's Legal Maxims, 10th Edn., 1939, p. 369

For the plaintiff - Wilfred Abraham; M/s. Shearn Delamore & Co.
For the defendants - Dulip Singh; M/s. Dulip Singh & Co.

JUDGMENT

Zakaria Yatim J:

This is a special case stated by the Arbitrator for the decision of the Court under s. 22 of the Arbitration Act 1952 (Revised 1972).

The plaintiff is the administratrix of the estate of one Sim Ah Kan alias Sim Pei Kan, deceased, who died in a road accident whilst riding a motor-cycle (Registration No. JP 5878) at the 85th milestone Johore Bharu/Segamat Road on 12 April 1976. The defendants are the Insurance

Company with whom the deceased was insured under Talisman Accident Policy No. T. 2701802/5 dated 16 May 1975.

The plaintiff's claim is for a sum of RM50,000 being the amount of compensation payable under the Policy upon the death of the deceased. The defendants denied liability on the ground that the death of the deceased was caused by motor-cycling, a risk, which they claimed, was not covered by the Policy.

The facts of the case are not in dispute. The deceased did take out a Talisman Policy No. T. 2701802/5 from the defendants on 16 May 1975. He was the insured under the Policy. The deceased died as a result of a motor accident at the 85th Milestone, Johore Bharu/Segamat Road, whilst riding a motor-cycle bearing Registration No. JP 5878. The accident happened during the currency of the Policy. Compensation due to be paid out under the Policy for death is a sum of RM50,000. The sum would be paid out subject to all the conditions of the Policy being satisfied.

The Policy does not cover death or disablement caused under the circumstances described in the seven Exceptions stated therein. The relevant exception in this case is Exception 6, which states as follows:

> Death or disablement caused by or consequent upon participation in hunting, mountaineering, winter sports, racing of any kind, polo, football, motor-cycling or any form of diving in the sea.

The question stated by the Arbitrator for the decision of the Court is whether, upon a true construction of the Policy, the word "motor-cycling" contained in Exception 6 of the Policy relates to the use of a motor-cycling when undertaken as part of some sporting activity. If the Court decides that "motor-cycling" in Exception 6 of the Policy relates to the use of a motor-cycle for any purpose, then the plaintiff's claim should be dismissed. On the other hand, if the Court decides that "motor-cycling" in the said Exception relates only to motor-cycling when undertaken as part of some sporting activity, then the plaintiff is entitled to receive from the defendants a sum of RM50,000 with interest.

Counsel for the plaintiff argued that riding a motor-cycle on a public road is not participating in motor-cycling, as envisaged in Exception 6 of the Policy. According to him the words in Exception 6, including the word "motor-cycling", relate to sporting activities.

Counsel for the defendants contended that the word "motor-cycling" should be given its ordinary and plain meaning. According to him, motor-cycling in Exception 6 means motor-cycling ordinarily, and not motor-cycling for sporting purposes. He submitted that there are two limbs to Exception 6. The first limb relates to death caused by hunting, mountaineering, winter sports etc. The second limb relates to death caused by motor-cycling, which is not related to any sporting activity. He added that the words in Exception 6 are not similar in nature and they must be given their plain ordinary meaning.

In order to ascertain the meaning of the word "motor-cycling" in Exception 6, the Court has to look at the intention of the parties. It is the cardinal rule of construction of insurance policies that the intention of the parties must prevail. *Drinkwater v. The Corporation of the London Assurance* [1767] 2 Wils KB at 363 p. 364; *Tarleton and Others v. Starinforth and Ors.* [1794] 5 TR 695 at p. 699; and *Braunstein v. The Accidental Death Insurance Company* [1861] 1 B & S 782 at p. 799.

Looking at Exception 6, it is clear that all the words contained therein relate to the same class of activities. I cannot accept the argument of Counsel for the defendants that there are two limbs to the Exception. If it was intended that the Exception should contain two types

of exceptions, they should be laid down separately as in the other exceptions. Each of the other exceptions relates to separate circumstances. Exception 1 deals with death or disablement that occurs outside a prescribed geographical area. Exception 2 relates to catastrophes. Exception 3 is concerned with radiation and radioactivity. Exception 4 relates to death or disablement caused by self-inflicting harm. Exception 5 relates to death or disablement caused by pregnancy or childbirth. Exception 7 relates to death or disablement resulting from accident to any aircraft.

Furthermore, it has been stated in Broom's *Legal Maxims*, 10th Edn. 1939 on p. 369, that the coupling of words together shows that they are to be understood in the same sense.

The question for determination here is the meaning of the word "motor-cycling" as contained in Exception 6. In order to construe the true meaning of the word "motor-cycling" in the Exception, the maxim *Noscitur a Sociis* may be relied upon. The meaning of the word "motor-cycling", may, therefore, be ascertained by reference to the meaning of the words associated with it in Exception 6.

The Arbitrator, in his Award, found that the genus to be derived from the activities described in Exception 6 is that they are "physical activities to which an unusual degree of risk of injury attaches." He then held that the death of the deceased was caused by or consequent upon participation in motor-cycling and that such risk was expressly excepted from the policy. Accordingly, the defendants were not liable to pay compensation of RM50,000 to the estate of the deceased.

With respect, I do not agree with this finding. It is true that in Exception 6 the words "mountaineering, winter sports, and racing of any kind" relate to physical activities to which an unusual degree of risk of injury attaches. But "football", which is also included in the same Exception, is certainly not a game which involves an unusual degree of risk of injury.

In my opinion, the words "hunting, mountaineering, winter sports, racing of any kind, polo, football or any form of diving in the sea", must be read together and it is clear that they have one thing in common. They all relate only to sporting activities. This conclusion is supported by the presence of the word "participation" in the Exception. One must be participating in any one of the sporting activities described in the Exception. Counsel for the plaintiff has rightly pointed out that riding a motor-cycle on a public road is not participating in motor-cycling. Applying the maxim *Noscitur a Sociis*, the meaning of the word "motor-cycling" must be associated with the meaning of the other words in the Exception. Thus, the word "motor-cycling" relates only to a sporting activity.

Therefore, the answer to the question raised by the Arbitrator in the special case stated is that the word "motor-cycling" contained in Exception 6 of the Policy relates only to motor-cycling when undertaken as part of some sporting activity.

The defendants do pay the costs of these proceedings to be taxed as provided in Appendix 'B' of the Rules of the High Court, 1980.

Also found at [1983] 2 CLJ 97